

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MELVIN D. KENT,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. C20-0296-JCC

ORDER

This matter comes before the Court on Petitioner's objections (Dkt. No. 9) to the report and recommendation of the Honorable Michelle L. Peterson, United States Magistrate Judge (Dkt. No. 8). Petitioner seeks relief under 28 U.S.C. § 2254 from a 2006 judgment and sentence of the Snohomish County Superior Court. (*See* Dkt. No. 5-1 at 1.) Judge Peterson recommends that the Court dismiss Petitioner's *habeas* petition without prejudice because he has not exhausted his state court remedies. (Dkt. No. 8 at 2.) Petitioner concedes that he did not present his federal *habeas* claims to the state courts for review, but he argues that those claims were "vicariously" exhausted because a different individual, Scott Fischer, unsuccessfully appealed his conviction to the Washington Supreme Court. (*See* Dkt. No. 9 at 1.) However, one individual cannot vicariously exhaust another individual's *habeas* claims because *habeas* claims are personal to each individual. *See McKinney v. Ryan*, 730 F.3d 903, 912 (9th Cir. 2013). Accordingly, the Court ORDERS as follows:

1. Petitioner's objections (Dkt. No. 9) are **OVERRULED**;
2. Judge Peterson's report and recommendation (Dkt. No. 8) is **APPROVED** and
ADOPTED;
3. Petitioner's *habeas* petition is **DISMISSED** without prejudice;
4. Petitioner is **DENIED** a certificate of appealability; and
5. The Clerk is **DIRECTED** to send copies of this order to Petitioner and to Judge Peterson.

DATED this 1st day of May 2020.

A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE